UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBRA A. YOST, Plaintiff, v. CAROLYN W. COLVIN, Acting Commissioner of the Social Security Administration, Defendant.	C15-1279 TSZ ORDER

THIS MATTER comes before the Court on appeal from a final decision of the Acting Commissioner of the Social Security Administration ("Commissioner") denying plaintiff Debra A. Yost's applications for disability insurance benefits ("DIB") and supplemental security income ("SSI") benefits under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-434 and 1381-1383f. Having reviewed all papers filed in connection with the appeal, the Court enters this order.

Background

Plaintiff was born in 1964, completed high school, and worked as a receptionist for many years. AR 35, 43, 296-301. She has not, however, engaged in substantial gainful activity since August 2, 2008, which she alleges was the onset date of her disability. AR 19. Plaintiff applied for DIB and SSI benefits in 2012. AR 284-92. In denying her application, Administrative Law Judge ("ALJ") Tom L. Morris determined

that plaintiff has the following severe impairments: "degenerative disc disease of the thoracic and cervical spines, right wrist de Quervain's tenosynovitis,[1] an affective disorder, and generalized anxiety disorder." AR 19. ALJ Morris further concluded that plaintiff has the residual functional capacity to perform, with certain limitations, a range of "light work" as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b). AR 21. According to ALJ Morris, although plaintiff's residual functional capacity does not enable her to engage in past relevant work, she can make an adjustment to other occupations (for example, document preparer, final assembler, or patcher) as to which a significant number of jobs exist in the national and regional economy. AR 25-26. As a result, ALJ Morris ruled that plaintiff "has not been under a disability . . . from August 2, 2008, through the date of [his] decision," which was issued on January 31, 2014. AR 26-27. The Appeals Council denied plaintiff's request for review. AR 1-4.

Plaintiff now seeks judicial review pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3). She presents six issues for the Court's consideration: (1) whether the administrative record is complete;[2] (2) whether ALJ Morris properly declined to recuse;

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[1] Plaintiff also has de Quervain's tenosynovitis in her left wrist, *see* AR 386-88, but ALJ Morris deemed it "nonsevere" because "her symptoms resolved following an injection," AR 19. *See also* AR 52 (plaintiff testified that she "got a cortisone shot and it was better").

[2] Plaintiff asserts that the administrative record is deficient in two ways: (i) the omission of exhibits attached to her attorney's letter dated September 20, 2013 (the letter itself is included at AR 250-82); and (ii) the omission of a letter from her mother. As to the latter item, which ALJ Morris did not mention in his decision, the Commissioner has indicated that plaintiff is herself responsible for the oversight; although plaintiff might have intended to submit a letter from her mother, she apparently never did so. Plaintiff replies that the transcript of the hearing proves she proffered her mother's letter, but the first page cited by plaintiff merely mentions two letters that "have not been exhibited" and that ALJ Morris indicated he would review, without identifying their authors, *see* AR 36, and the other pages cited by plaintiff, which contain a colloquy between plaintiff and her attorney regarding her mother's letter,

(3) whether ALJ Morris appropriately exercised his discretion in refusing to subpoena Howard Platter, M.D.; (4) whether ALJ Morris gave due weight to the opinion of Angel Lin, M.D.; (5) whether ALJ Morris gave due weight to the opinion of Linda Jansen, Ph.D.; and (6) whether ALJ Morris expressed a sufficient basis for discrediting plaintiff's testimony. Plaintiff has departed from the traditional manner of challenging a denial of social security benefits, which usually targets the conclusions reached at one or more of the five steps in the sequential process for determining whether a claimant is disabled within the meaning of the Social Security Act.[3] The Court, however, treats plaintiff's

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establish only that ALJ Morris did not hear counsel's question, and that plaintiff had read and was upset by the letter, *see* AR 54-55. Plaintiff further asserts that the duplication in the administrative record of the first page of her ex-husband's declaration, which appears as both Exhibit 9E, AR 340, and Exhibit 11E, AR 342, demonstrates that her mother's one-page letter is missing, but such observation does not establish that either the ALJ or the Commissioner, as opposed to plaintiff, is at fault for failing to include it. Plaintiff has not described the contents of her mother's letter or indicated how it might have affected ALJ Morris's analysis, and she has not demonstrated that her mother's missing letter constitutes a basis for remand.

[3] Step one of the sequential evaluation process inquires whether the claimant is presently engaged in "substantial gainful activity." 20 C.F.R. §§ 404.1520(a)(4)(i) & 416.920(a)(4)(i). If so, the claimant is not entitled to disability benefits, and no further evaluative steps are required. *Id.* at §§ 404.1520(b) & 416.920(b); *see also id.* at § 404.1572 (defining "substantial gainful activity" as "significant physical or mental activities" done or usually done for "pay or profit"). Step two asks whether the claimant has a severe impairment, or a combination of impairments, that significantly limits the claimant's physical or mental ability to do basic work activities. *See id.* at §§ 404.1520(a)(4)(ii)&(c) and 416.920(a)(4)(ii)&(c). If not, the claimant is not entitled to disability benefits, and again, additional analysis is not required. *Id.* Step three involves a determination of whether any of the claimant's severe impairments is equivalent to one that is listed in the regulations. *Id.* at §§ 404.1520(a)(4)(iii) & 416.920(a)(4)(iii). A claimant with an impairment that "meets or equals" a listed impairment for the requisite twelve-month duration is "per se" disabled and qualifies for benefits. *See id.* at §§ 404.1520(d) & 416.920(d). If the claimant is not "per se" disabled, then the question under step four is whether the claimant's "residual functional capacity" enables the claimant to perform past relevant work. *Id.* at §§ 404.1520(a)(4)(iv) & 416.920(a)(4)(iv). If the claimant can still perform past relevant work, then the claimant is not entitled to disability benefits and the inquiry ends there. *Id.* at §§ 404.1520(e)-(f) & 416.920(e)-(f). On the other hand, if the opposite conclusion is reached, the burden shifts to the Commissioner at step five to prove that the claimant can make an adjustment to other work, taking into account the claimant's age, education, and work experience. *Id.* at §§ 404.1520(a)(4)(v) & 416.920(a)(4)(v); *see id.* at §§ 404.1560(c)(2) & 416.960(c)(2). If the claimant cannot make such adjustment to other work, disability benefits may be awarded. *Id.* at §§ 404.1520(g) & 416.920(g).

arguments, which primarily involve the assessment of her residual functional capacity, as challenging ALJ Morris's findings at steps four and five of the sequential evaluation process. Plaintiff does not appear to separately attack ALJ Morris's determination, at step three, that she is not "per se" disabled, or the vocational expert's estimates, at step five, concerning the number of jobs available for persons with the residual functional capacities described in the various hypotheticals posed by ALJ Morris.

Discussion

This Court's review is limited to assessing whether the ultimate denial of benefits is free of legal error and based on factual findings that are supported by substantial evidence. *See Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1998); *see also* 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla, but less than a preponderance" of evidence; it is "such relevant evidence as a reasonable person might accept as adequate to support a conclusion." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). In determining whether the factual findings are supported by substantial evidence, the Court must "review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The Court "may not affirm simply by isolating a specific quantum of supporting evidence." *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). If, however, the evidence reasonably supports both affirming and reversing the denial of benefits, the Court may not substitute its judgment for that of the ALJ. *See Reddick*, 157 F.3d at 720-21; *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (if "the evidence is susceptible to more than one rational

interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld").

A. Administrative Record

Ordinarily, the administrative record for a matter brought before the Court under 42 U.S.C. §§ 405(g) and/or 1383(c) contains materials pertaining only to the individual seeking judicial review. *See* 20 C.F.R. § 405.360 ("The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were *used in making the decision under review* . . . . The official record of *your claim* will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also will include any prior initial determinations or decisions on *your claim*." (emphasis added)); *see also id.* at § 404.1512 ("Evidence is anything you or anyone else submits to us or that we obtain that relates to *your claim*." (emphasis added)). In this case, however, plaintiff contends that the administrative record should include redacted copies of 49 decisions issued by ALJ Morris between September 27, 2012, and July 15, 2013, concerning other applicants for DIB and/or SSI benefits, as well as copies of psychological or psychiatric evaluations performed in twelve of those cases. *See* Compl. at ¶ 3.1 (docket no. 1).[4]

[4] Plaintiff also asserts that the administrative record should contain letters from Keith Sonnanburg, Ph.D., and James Czysz, Ph.D., which were attached to plaintiff's counsel's letter dated September 20, 2013, addressed to ALJ Morris and Chief ALJ David DeLaittre. *See* Compl. at ¶ 3.1 (docket no. 1); *see also* AR 262, 268-69, 272-74 (citing Sonnanburg's letter as Exhibit 8 to counsel's letter); AR 270, 276-77 (citing Czysz's letter as Exhibit 13 to counsel's letter). Plaintiff's counsel quoted extensively from Sonnanburg's and Czysz's letters in his own letter to ALJ Morris and Chief ALJ DeLaittre, which is already part of the administrative record, and thus, the substance of those documents is before the Court. Plaintiff makes no assertion that Sonnanburg's and/or Czysz's letters contain relevant information beyond

Plaintiff's position is without merit. ALJ Morris's rulings, and psychological or psychiatric evaluations, about claimants other than plaintiff may not be used to make a determination concerning whether plaintiff is disabled within the meaning of the Social Security Act, and thus, such rulings and evaluations do not constitute "evidence," as defined by regulation, and are not properly made part of the "official record." *See* 20 C.F.R. §§ 404.1512 & 405.360; *see also* Hearings, Appeals, and Litigation Law Manual [HALLEX] I-3-9-40(E) (available at https://www.ssa.gov/OP_Home/hallex/hallex.html) (enumerating as an example of "error on the face of the evidence" an adjudicator's reliance on "the wrong person's" records). Moreover, a non-random[5] assortment of prior decisions by ALJ Morris does not establish bias or a reason requiring him to recuse. Plaintiff does not suggest that all (or even any) of the 49 decisions at issue were reversed or otherwise called into question upon administrative or judicial review.[6] Rather, plaintiff advances three arguments for how this small sample of decisions allegedly

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the lengthy passages reproduced from them in counsel's letter to ALJ Morris and Chief ALJ DeLaittre, and thus, she has not established that a remand is necessary for the purpose of incorporating those letters into the administrative record.

[5] The 49 decisions at issue involve claimants represented by a small number of law firms, including Schroeter, Goldmark & Bender. None of the decisions involve claimants who appeared pro se. Plaintiff has not described how the demographics of claimants represented by the law firms in question compare with the demographics of claimants concerning whom ALJ Morris issued decisions during the time period at issue, has not identified the other law firms involved, and has not indicated what portion of the 49 decisions concern clients of Schroeter, Goldmark & Bender; her attorney has merely stated that, to the best of his knowledge, the 49 decisions at issue represent all rulings by ALJ Morris received by the law firms in question during the described time period. AR 252.

[6] Plaintiff apparently submitted to ALJ Morris and Chief ALJ David DeLaittre declarations from attorneys Ann Cook, Anne Kysar, Peter McKee, Matthew Rovner, and Sandra Widlan. *See* AR 252. Whether these declarations discuss the results of any administrative or judicial review in the 49 cases in question is unknown. Moreover, in neither her pleading nor her opening brief does plaintiff make any allegation or argument that such declarations should have been incorporated into the administrative record in this case. *See* Compl. at ¶ 3.1 (docket no. 1); Pla.'s Brief (docket no. 10).

evidences ALJ Morris's "bias" against "welfare" recipients, routine misapplication of law, and repeatedly improper assessments of claimant credibility,[7] namely: (i) by representing a lower rate of favorable decisions than the nationwide average; (ii) by revealing different rates of favorable outcomes depending on whether the phrases "Department of Social and Health Services" or "Global Assessment of Functioning" (or their acronyms) appeared in the decision; and (iii) by referring to "welfare" benefits when drawing conclusions about a claimant's motivation to seek employment. Plaintiff's statistical and substantive analysis is flawed.

1. Comparisons to Peers

Contrary to plaintiff's assertion, any disparity between ALJ Morris's and his colleagues' statistics does not itself demonstrate "bias." With respect to the 49 decisions issued by ALJ Morris between September 27, 2012, and July 15, 2013, concerning claimants represented by certain law firms, including Schroeter, Goldmark, & Bender, 13 (26.5%) were favorable. This rate is consistent with (and indeed higher than) the percentage of favorable decisions (20%) that were issued by ALJ Morris during roughly the same timeframe, without regard to legal representation. *See* AR 251 (stating that 44 of 220 decisions between September 29, 2012, and June 28, 2013, were favorable).

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[7] Plaintiff does not explain how the Court could possibly review ALJ Morris's legal analysis and/or credibility findings in other cases without access to the administrative record in each proceeding, which plaintiff has never proffered, or how the Court's consideration of such collateral challenges to decisions involving other claimants would be in any way consistent with either the provisions or purposes of the Social Security Act. *See* 42 U.S.C. § 405(h) ("No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided."); *see also Heckler v. Ringer*, 466 U.S. 602, 614-15 (1984) (Section 405(h) "provides that § 405(g), to the exclusion of 28 U.S.C. § 1331, is the sole avenue of judicial review"); *Weinberger v. Salfi*, 422 U.S. 749, 760-64 (1975).

Both of the above-recited rates, however, are substantially less than the median rate of favorable decisions for the 1,336 ALJs across the country who each issued more than 200 rulings during the period at issue, which was roughly 55%. AR 252. Plaintiff's contention that ALJ Morris's below-median rate of favorable decisions somehow shows "bias" ignores the fact that ALJs hear a matter only after benefits have already been denied on initial determination and after reconsideration. *See* 20 C.F.R. §§ 404.900(a) & 416.1400(a). ALJ Morris's lower rate of favorable decisions (or reversals) might simply reflect that determinations made initially and/or on reconsideration in this region are of higher quality than elsewhere in the nation, and thus, does not itself substantiate any parsimony or "bias" on the part of ALJ Morris.

2. Comparisons Among 49 Prior Decisions

Plaintiff's attempt to correlate certain terms with particular results among the 49 decisions at issue is premised on improper assumptions. Plaintiff focuses on 34 of the 49 previous decisions by ALJ Morris in which the agency name "Department of Social and Health Services" and/or the acronym "DSHS" appears. *See* AR 255. Plaintiff casts aspersions against ALJ Morris because he issued favorable decisions in only five of the 34 decisions mentioning DSHS, or in roughly 15% of them. *Id.* Plaintiff contrasts this figure with the rate of favorable outcomes (53%) among the remaining 15 decisions,[8] eight of which were favorable. *Id.* Plaintiff, however, makes no representation

[8] Plaintiff's counsel's letter dated September 20, 2013, to ALJ Morris and Chief ALJ DeLaittre, indicates that eight of the "remaining 16 decisions" were favorable. AR 255. The Court will assume that the letter correctly reported the number of favorable rulings, but miscalculated the difference between 49 and 34.

concerning whether the claimants in those other 15 cases were receiving DSHS benefits even though ALJ Morris's decision did not specifically refer to DSHS, and the Court declines to draw from the mere absence of the agency name or its acronym the inferences suggested by plaintiff, namely that the other 15 cases involved claimants who were not poor and/or not receiving benefits from DSHS.

With regard to Global Assessment of Functioning ("GAF"),[9] the Court reaches a similar conclusion. According to plaintiff, of the 49 prior decisions at issue, 17 involved claimants who had sought or received DSHS benefits and submitted evidence of a GAF score. *See* Pla.'s Brief at 9 (docket no. 10 at 14). Plaintiff criticizes ALJ Morris because, of those 17 decisions, only one was favorable (6%), while of the other 32 decisions, twelve were favorable (38%). *Id.* Plaintiff does not, however, indicate whether the claimants in the twelve other favorable decisions received DSHS benefits or had GAF evaluations, regardless of whether ALJ Morris explicitly discussed them.[10]

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[9] Global Assessment of Functioning, which had been Axis V in a multi-axial system for assessing mental disorders, is no longer in widespread use. *See* Am. Psychiatric Ass'n, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 16 (5th ed. 2013) ["DSM-5"]. The GAF scale had ranged from 0 to 100, with each 10-point increment having both a symptom severity and a functioning component; a GAF rating would fall within particular decile (*e.g.*, 1-10, 11-20, etc.) if either the symptom severity or the level of functioning met the critieria. Am. Psychiatric Ass'n, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 32 (4th ed. (Text Revision) 2000) ["DSM-IV-TR"]; *see id.* at 33 (indicating that, when an "individual's symptom severity and level of functioning [were] discordant, the final GAF rating always reflect[ed] the worse of the two"). The GAF methodology was considered "useful in tracking the clinical progress of individuals in global terms, using a single measure" with respect to "psychological, social, and occupational functioning," but not as to physical impairments or environmental limitations. *Id.* at 32. The DSM-5 has moved away from the axial diagnosis method and discarded the GAF scale because of "its conceptual lack of clarity" and "questionable psychometrics in routine practice." DSM-5 at 16.

[10] Plaintiff has separately stated that five of ALJ Morris's thirteen favorable decisions during the period at issue referred to DSHS. Thus, of the twelve comparator decisions, four must have mentioned DSHS, and whether other favorable decisions involved claimants receiving DSHS benefits is unknown. In a different

Plaintiff simply has not provided sufficient information from which to insinuate, on the basis of outcome ratios, hostility on the part of ALJ Morris toward applicants for, or recipients of, DSHS benefits and/or persons measured on the now-obsolete GAF scale. In addition, given the small sample sizes at issue (*i.e.*, 5 of 34 versus 8 of 15, and 1 of 17 versus 12 of 32), the variations plaintiff has calculated in the rates of ALJ Morris's favorable decisions are not statistically significant. Moreover, plaintiff's argument that the 49 prior decisions would, if added to the administrative record in this case, demonstrate "bias" against her on the basis of "DSHS/GAF" status is meritless given that plaintiff does not even allege that ALJ Morris improperly used or ignored her GAF score.[11] *See id.* at 7 & 9 (docket no. 10 at 12 & 14).

3. References to "Welfare"

Plaintiff challenges specific language contained in three of the 49 prior decisions. Two of the three decisions issued by ALJ Morris included a finding, based in part on the receipt of "food stamps," that the claimant might lack "motivation and a sense of urgency to find work." *See* AR 256 (quoting Decisions Nos. 7 and 17). The other decision at issue had similar language, but was based in part on the claimant's receipt of General

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context, plaintiff represented that, in "more than 20" of the 49 decisions at issue, GAF measurements were used. Pla.'s Brief at 7 (docket no. 10 at 12). Thus, in addition to the 17 decisions relating to persons that plaintiff describes as "DSHS/GAF" claimants, at least three other decisions discussed GAF scores. Plaintiff has not indicated whether these three (or more) cases in which GAF figures were mentioned had favorable or unfavorable outcomes.

[11] An examining psychologist graded plaintiff as a 55 on the GAF scale, *see* AR 433, which was within the range reserved for "[**m**]**oderate symptoms** (e.g., flat affect and circumstantial speech, occasional panic attacks) **OR moderate difficulty in social, occupational, or school functioning** (e.g., few friends, conflicts with peers or co-workers)," DSM-IV-TR at 34 (emphasis in original). ALJ Morris's decision does not mention plaintiff's GAF score or its ramifications.

Assistance – Unemployable ("GAU") benefits. *See* AR 256-57 (quoting Decision No. 4). In reproaching ALJ Morris for improperly drawing inferences from the receipt of food stamps or GAU benefits, plaintiff reasons that "welfare" is provided only to poor individuals who are determined by DSHS to be "disabled," and that the inability of an individual to work, as a result of a "disability," cannot logically support the conclusion that the person lacks motivation to find employment.

Plaintiff relies on a false premise. Many DSHS or "welfare" benefits are available to individuals who are poor, but who are not "disabled." *See* WAC Chapter 388-400 (summarizing assistance programs). For example, Washington's Basic Food program subsidies (*i.e.*, "food stamps") can be obtained by those who satisfy citizenship or alien status, residency, income, and work requirements. WAC 388-400-0040. Disability is not among the eligibility criteria for food stamps, but disability can serve as a basis for an exemption from the income and work requirements. *Id.*; *see* WAC 388-444-0010(7). Other grounds for exemption from work requirements include enrollment in an accredited school, training program, or institution of higher education, caring for a dependent child under the age of six or for an incapacitated adult, and regular participation in a drug addiction or alcoholic treatment and rehabilitation program. WAC 388-444-0010(2), (6), & (8). Thus, the receipt of food stamps is not necessarily tied to the presence of a "disability."

In addition, under the GAU program, which was in effect until 2010, an individual could receive benefits if he or she was merely "incapacitated," meaning he or she could not be gainfully employed as a result of a physical or mental impairment that was

expected to continue for only 90 or more days (as opposed to the twelve or more months required under the Social Security Act to establish "disability"). *See* WAC 388-448-0001 (2009).[12] GAU benefits could continue, even when SSI benefits were never sought, if the recipient demonstrated "no material improvement" in his or her "medical or mental condition." *See* RCW 74.04.005(6)(g) (2009).[13] Thus, plaintiff's argument depends on a fallacy, namely that all "welfare" recipients are "disabled," and she therefore fails to establish that the correlation between the receipt of either food stamps or GAU benefits and a lack of motivation to seek work, which was drawn by ALJ Morris, constitutes evidence of "bias." More importantly, because ALJ Morris did not, in plaintiff's case, render any findings concerning possible disincentives for plaintiff to obtain employment, plaintiff has not shown that any such alleged "bias" played a role in the denial of benefits at issue here.

4. Plaintiff's Citations Are Inapposite

Plaintiff's reliance on *Varney v. Sec'y of Health & Human Servs.*, 846 F.2d 581, *modified by* 859 F.2d 1396 (9th Cir. 1988), as support for her request to augment the

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[12] In contrast, to qualify under the current system for the DSHS benefit known as aged, blind, or disabled ("ABD") cash assistance, a person must be (i) 65 years of age or older, (ii) blind, or (iii) "likely to be disabled." WAC 388-400-0060(1)(a). For purposes of the ABD program, the term "disabled" or "disability" has essentially the same meaning as under the Social Security Act, namely "the inability to engage in any substantial gainful activity" because of a "medically determinable physical or mental impairment" that can be expected to result in death or to last for a continuous period of at least twelve months. WAC 388-449-0001(1)(c); *compare* 42 U.S.C. §§ 416(i)(1) & 1382c(a)(3).

[13] The ABD program, now in effect, terminates cash assistance after a final decision (favorable or not) is made concerning SSI benefits, *see* RCW 74.62.030(1)(b); WAC 388-449-0150(3), and its immediate predecessor, Disability Lifeline, imposed a cap on the length of time (24 months in a 60-month period) an individual could receive benefits, *see* RCW 74.04.005(5)(h) (2010); *see also Elkins v. Dreyfus*, 2010 WL 3947499 at *1-*2 (W.D. Wash. Oct. 6, 2010) (summarizing the statutory scheme).

administrative record, is misplaced. Plaintiff asserts that she has met both of *Varney*'s "alternative tests" for remand. Pla.'s Brief at 4 (docket no. 10). *Varney*, however, did not adopt any test. In *Varney*, the social security claimant sought remand because the first 260 units of the tape recording of her hearing could not be transcribed and another 26 passages in the transcript were marked "inaudible." 846 F.2d at 583. The district court denied the claimant's request for remand because she had failed to make a showing that "material evidence was missing from the record." *Id.*; *see also* *McGlone v Heckler*, 791 F.2d 1119, 1120 (4th Cir. 1986) ("Whether the transcript is inadequate depends upon the materiality of the omissions. The plaintiff shoulders the burden of showing that some material evidence was not reported or was so incompletely reported that its effect is obscured."). On appeal, the claimant argued that the standard applied by the district court, which came from *McGlone*, improperly placed on the claimant the burden of producing a complete record, and she asserted that the appropriate test is "whether the record is adequate to allow judicial review." 846 F.2d at 583 (citing *Ward v. Heckler*, 786 F.2d 844, 848 (8th Cir. 1986) (indicating that, "[a]lthough distracting, the gaps [in the transcript] did not interfere with comprehension of the testimony to an extent that would hinder fair review")). The Ninth Circuit did "not decide which of these two standards is the more appropriate because under either one, Varney's argument fail[ed]." *Id.*

Not only did *Varney* not adopt or articulate a standard for when remand is needed to shore up the administrative record, *Varney* also involved a specific component of the administrative record, namely the transcript of the hearing, which is not at issue in this

case. The district court cases on which plaintiff relies are similarly distinguishable. In each of the district court cases that plaintiff cites, the items missing from the administrative record were either a sufficiently complete transcript of the hearing or an opinion or exhibit relating specifically to the claimant and on which the ALJ relied in making his or her decision. *See* *Reynolds v. Colvin*, 2014 WL 5286865 at *6-*7 (N.D. Ind. Oct. 15, 2014); *Parks v. Astrue*, 2011 WL 6211003 at *8 (E.D. Cal. Dec. 14, 2011); *Hill v. Astrue*, 526 F. Supp. 2d 1223, 1230 (D. Kan. 2007); *Barnes v. Barnhart*, 251 F. Supp. 2d 973 (D. Me. 2003); *Bailey v. Heckler*, 576 F. Supp. 621 (D.D.C. 1984); *Stewart v. Harris*, 509 F. Supp. 31, 33-34 (N.D. Cal. 1980). These authorities do not support plaintiff's contention that the 49 decisions by ALJ Morris and the twelve psychological or psychiatric evaluations at issue should have been incorporated into the administrative record,[14] and plaintiff's motion for remand to add such items to the administrative record is DENIED.

[14] In her reply brief, plaintiff discusses an order issued by Magistrate Judge J. Richard Creatura in another case being handled by Schroeter, Goldmark & Bender, namely *Cope v. Colvin*, Case No. C15-1744 JRC. In *Cope*, which seeks review of ALJ Larry Kennedy's denial of social security benefits, 54 prior decisions by ALJ Kennedy were included in the administrative record; the Commissioner's motion to remand the matter to remove the 54 decisions was denied. Order (C15-1744, docket no. 13). *Cope* is not on point. A decision denying remand for the purpose of removing items from the administrative record sheds no light on the question of whether a matter should be remanded with the aim of supplementing the record. In the order cited by plaintiff, Magistrate Judge Creatura made no ruling concerning whether the 54 prior decisions at issue support the allegation in *Cope* that ALJ Kennedy is "biased," and if those decisions are later deemed irrelevant, Magistrate Judge Creatura may simply ignore them. As he observed, "[t]he fact that there may be extra information in the record does not preclude this Court from conducting a proper review." *Id.* at 6. Because *Cope* is distinguishable, the Commissioner's motion to strike, docket no. 14, portions of plaintiff's reply, or in the alternative to permit a surreply, is STRICKEN as moot.

B. Recusal

ALJs are presumed to be unbiased. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). This presumption can be rebutted, *id.* at 857-58, but disqualification of an ALJ requires a showing of "actual bias." *Bunnell v. Barnhart*, 336 F.3d 1112, 1114-15 (9th Cir. 2003) (holding that the "appearance of impropriety" standard applicable to federal judges, *see* 28 U.S.C. § 455(a), does not govern ALJs, who are employed by the agency whose actions they review, and who would be required to recuse in every case if "appearance of impropriety" was the measure). Actual bias exists if an ALJ "is prejudiced or partial with respect to any party or has any interest in the matter pending for decision." 20 C.F.R. §§ 404.940 & 416.1440. Prejudice is demonstrated if "the ALJ's behavior, in the context of the whole case, was 'so extreme as to display clear inability to render fair judgment,'" but expressions of "impatience, dissatisfaction, annoyance, or even anger," which are "within the bounds of what imperfect men and women . . . sometimes display," do not themselves establish bias. *Rollins*, 261 F.3d at 858 (quoting *Liteky v. United States*, 510 U.S. 540, 551, 555-56 (1994)).

Plaintiff contends that ALJ Morris should have recused, but she points to no instances in which ALJ Morris manifested a lack of impartiality. Indeed, the transcript of the hearing reveals that ALJ Morris did not utter even a harsh word, and it contains no evidence of bias. In his decision, ALJ Morris indicated that he did not have a personal interest in this matter, was not acquainted with plaintiff, did not know anyone in common with her, and did not learn about her from an extrajudicial source. AR 16. Plaintiff does not dispute the accuracy of these representations.

Instead, plaintiff asserts that ALJ Morris misinterpreted Section I-2-1-60 of the Hearings, Appeals, and Litigation Law Manual. This provision recites concrete examples of proper grounds for recusal, including situations in which an ALJ and a claimant are acquainted with the same third person or an ALJ has knowledge about a claimant from an extrajudicial source. The provision also indicates that an ALJ may withdraw from a case if the "ALJ believes his or her participation in the case would give an appearance of impropriety." HALLEX I-2-1-60(A). Plaintiff assigns error to ALJ Morris's exclusive focus on the specific criteria for recusal and his silence regarding the more general "appearance of impropriety" basis for disqualification. Plaintiff does not, however, explain why ALJ Morris was required to discuss the "appearance of impropriety" test when the Ninth Circuit has indicated that it does not apply. *See Bunnell*, 336 F.3d at 1114-15. Moreover, plaintiff's argument that ALJ Morris was required to recuse on "appearance of impropriety" grounds lacks merit for the same reason that her motion for remand to expand the administrative record was denied. Plaintiff's request that ALJ Morris's decision be reversed on the basis of disqualification is DENIED.

C. Subpoena

Plaintiff assigns error to ALJ Morris's refusal to subpoena Howard Platter, M.D., a non-examining medical consultant for the Division of Disability Determination Services ("DDS"), a state agency that, pursuant to federal regulations, makes initial assessments concerning eligibility for DIB and SSI benefits and processes reconsideration requests. Dr. Platter became involved with plaintiff's case when she, without legal representation, sought reconsideration of the initial denial of benefits. *See* AR 98-107 (Ex. 7A) & 108-

20 (Ex. 8A). In conjunction with DDS examiner Jeffrey Petruso, Dr. Platter concluded, based on the medical evidence in the record, that plaintiff had the residual functional capacity to lift and/or carry 20 pounds occasionally (meaning "cumulatively 1/3 or less of an 8-hour day") and 10 pounds frequently (meaning "cumulatively more than 1/3 [and] up to 2/3 of an 8-hour day"), to stand about six hours in an 8-hour workday, and to sit about six hours in an 8-hour workday. AR 104, 114-15; *see* 20 C.F.R. §§ 404.1527(e) & 416.927(e) (outlining the procedures applicable when a state agency examiner makes an initial or reconsideration determination alone or in conjunction with a state agency medical or psychological consultant).

Although ALJ Morris was required to consider Dr. Platter's views, he was not bound by them. 20 C.F.R. §§ 404.1527(e)(2)(i) & 416.927(e)(2)(i). ALJ Morris assigned "some evidentiary weight" to Dr. Platter's assessment because it was "largely consistent with the claimant's longitudinal treatment history and performance on physical examinations," AR 24, but he added more restrictions in light of (i) plaintiff's right wrist de Quervain's tenosynovitis, which was diagnosed after Dr. Platter issued his opinion, *see* AR 21 (finding that plaintiff could lift or carry 20 pounds occasionally and 10 pounds frequently with her *left* hand, but only "docket files, ledgers, and small tools" with her *right* hand), and (ii) plaintiff's complaints of pain and the views of her treatment provider, *see id.* at 21 & 24 (concluding that plaintiff could stand or walk for only four hours, rather than six hours, in an 8-hour workday). Plaintiff has not quarreled with ALJ Morris's adjustment concerning the amount of time she can stand or walk each day,

or with the assessments of ALJ Morris and Dr. Platter (as well as the DDS examiner) regarding her ability to sit for six hours in an 8-hour shift.

Plaintiff's assertion that ALJ Morris should have subpoenaed Dr. Platter relates solely to the quantum of weight she was deemed capable of lifting or carrying with her left hand. Plaintiff argues that ALJ Morris's conclusion she can lift or carry 20 pounds occasionally and 10 pounds frequently with her left hand, which would be consistent with the physical exertion requirements for "light work," *see* 20 C.F.R. §§ 404.1567(b) & 416.967(b), is contradicted by her treatment provider's evaluation concerning her lifting and carrying strength, *see* AR 441-42 (Ex. 10F). Plaintiff does not, however, challenge ALJ Morris's conclusion that she can lift and carry "docket files, ledgers, and small tools," which meets the lifting and carrying criteria for "sedentary work." *See* 20 C.F.R. §§ 404.1567(a) & 416.967(a). Because ALJ Morris based his decision that plaintiff can make an adjustment to other work on the number of "sedentary," as opposed to "light work," jobs available in the national economy for someone of her age, education, work experience, and residual functional capacity, *see* AR 26, plaintiff fails to show that any error in not subpoenaing Dr. Platter was prejudicial.

In addition, plaintiff has not demonstrated that she was entitled to have Dr. Platter subpoenaed. When "necessary for the full presentation of a case," an ALJ may either sua sponte or at the request of a party issue subpoenas for the appearance and testimony of witnesses and/or the production of documents. 20 C.F.R. §§ 404.950(d)(1) & 416.1450(d)(1). An ALJ has discretion to decide when a subpoena and related cross-examination is warranted. *Solis v. Schweiker*, 719 F.2d 301, 302 (9th Cir. 1983); *see*

Tarter v. Astrue, 2012 WL 1631968 at *3 (W.D. Wash. Apr. 17, 2012) (report and recommendation to reverse and remand), *adopted* 2012 WL 1631887 (W.D. Wash. May 9, 2012). An ALJ abuses such discretion, and violates the claimant's procedural due process rights, if he or she does not subpoena or permit cross-examination of an examining physician who is a "crucial witness" and "whose findings substantially contradict the other medical testimony." *Solis*, 719 F.2d at 301. ALJ Morris did not abuse his discretion or violate plaintiff's procedural due process rights in refusing to subpoena Dr. Platter.

Dr. Platter was not a "crucial witness." He neither treated nor examined plaintiff. He merely reviewed the medical evidence in the record and formulated opinions that ALJ Morris could and did (in part) disregard. *See* 20 C.F.R. §§ 404.1527(e)(2) & 416.927(e)(2). Cross-examination of Dr. Platter would have produced no evidence concerning plaintiff's lifting and carrying abilities, and would have instead focused primarily on a form completed by plaintiff's treating physician, which ALJ Morris could (and did) himself interpret. The form, which was signed in April 2011 by Angel Lin, M.D., indicated that plaintiff's impairment was expected to last three months or "possibly longer," that plaintiff could lift "0-5 pounds" occasionally and frequently, and that she had "some weakness in ® arm," making her "unable to lift more than 5 lbs." AR 441-42 (Ex. 10F).

Dr. Platter's findings did not "substantially contradict" the form in question or the other medical testimony. Dr. Platter reached his conclusions in late October 2012, AR 105 & 116, over a year after the period during which Dr. Lin predicted plaintiff's

right arm weakness would persist. Although the April 2011 form offers no explanation, the office visit notes from approximately the same timeframe indicate that plaintiff was complaining of right shoulder pain, *see* AR 407-11, as opposed to the symptoms of de Quervain's tenosynovitis, which was not diagnosed in her left wrist until early 2012, AR 386-89, and which did not develop in her right wrist until 2013, *see* AR 455-56, 458-60. In July and again in September 2011, Dr. Lin referred plaintiff to physical therapy to address lower back and neck pain and tingling in her left hand and foot. AR 401-03; *see* AR 390-92. No further mention was made of right shoulder pain or right arm weakness, and Dr. Platter could have reasonably inferred that the issue had resolved as anticipated within the three-month period between April and July 2011.

Plaintiff commenced physical therapy in October 2011, but in November 2011, she telephonically requested to cancel future appointments and be discharged from physical therapy. AR 361-68. As a result, plaintiff's physical therapist issued a discharge report; according to the report, at the end of the last physical therapy session in late October 2011, plaintiff "reported no pain or tingling in [her] fingers" and demonstrated an increased range of motion in her shoulders and thoracic spine. AR 362. This evidence does not "substantially contradict," but rather supports, Dr. Platter's estimate that plaintiff can lift and carry the amount of weight associated with "light work." Plaintiff's argument that she was not afforded procedural due process because Dr. Platter was not subpoenaed lacks merit.

D. Dr. Lin's Opinion

For similar reasons, plaintiff cannot prevail on her assertion that ALJ Morris gave insufficient weight to the form Dr. Lin completed in April 2011. With regard to lifting and carrying restrictions, ALJ Morris discounted Dr. Lin's opinion only with respect to plaintiff's left upper extremity; he did so in light of medical evidence, *see* AR 455, and plaintiff's testimony, *see* AR 52, that the de Quervain's tenosynovitis on her left side had resolved. AR 24. The Court is satisfied that Dr. Lin's assessment concerning plaintiff's lifting and carrying strength had expired on its own terms and was contradicted by more recent evidence, and that ALJ Morris articulated "specific and legitimate reasons" based on "substantial evidence in the record" for disregarding in part the April 2011 form. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

The Court is also persuaded that, even if ALJ Morris misjudged how much plaintiff can lift and carry with her left hand, such overestimate is harmless because ALJ Morris considered only "sedentary" occupations in his step five analysis. *See* AR 26. As he observed, if plaintiff had the residual functional capacity "to perform the full range of light work, a finding of 'not disabled' would be directed by Medical-Vocational Rule 202.21," but plaintiff's "ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations." *Id.* Accordingly, ALJ Morris tailored the questions he posed to the vocational expert. *See* AR 64-66 (framing hypotheticals that included, alternatively, sedentary-level lift-and-carry restrictions for the right hand, and reduced "light work" lift-and-carry limits of ten pounds occasionally and five pounds frequently). In response to plaintiff's counsel's

inquiry, the vocational expert explained that the "sedentary" jobs he had identified in his answers to ALJ Morris would also fit a situation in which an individual could lift and carry only five pounds or less. AR 72. ALJ Morris's treatment of Dr. Lin's April 2011 opinion is simply not a ground for reversal.

E. Dr. Jansen's Opinion

Plaintiff was examined in mid-October 2012 by Linda Jansen, Ph.D., a consulting psychologist for DDS, after failing to appear on three prior occasions. *See* AR 423, 428, & 429 (Exs. 4F, 6F, & 7F). Dr. Jansen observed that plaintiff (i) had "fair" eye contact, (ii) had a generally normal rate and volume of speech, although at times she spoke rapidly, (iii) exhibited a "generally linear" stream of mental activity, (iv) was able to follow the conversation, although her answers were often indirect and her responses sometimes rambling and repetitive, (v) was alert and oriented to person, place, and time, although she was unsure of the exact date, (vi) properly identified the current season as "fall" and correctly named the current and previous presidents, as well as the current governor, (vii) registered three of three objects and recalled them four minutes later, (viii) correctly spelled the word "world" backwards and accurately subtracted serial 7s, (ix) followed a simple three-step command, and (x) performed in the average range for her age on Trail Making tasks. AR 430-31. According to Dr. Jansen, plaintiff's performance on the Trail Making tasks, one of which required "making cognitive shifts" or "being mentally flexible," suggested that plaintiff "has little difficulty with attention and concentration." AR 431.

Dr. Jansen described plaintiff's prognosis as "guarded." AR 433. Relying on plaintiff's complaints of chronic pain (historically managed with narcotics), homelessness (forcing her to stay with her ex-husband), and symptoms of depression and anxiety (*i.e.*, lack of energy, loss of sleep and appetite, anhedonia, restlessness, irritability, poor concentration, self-isolation, rumination, perseveration, and hopelessness), Dr. Jansen concluded that plaintiff "would have difficulty performing complex work tasks," that plaintiff's tendency to isolate herself "would interfere with [her] ability to work with the public or with co-workers on a continual basis," that plaintiff "would be unable to cope with the usual stress encountered in a competitive work setting," and that plaintiff's "chances for a return to employment are not likely to improve without improvement in pain management." AR 432-34.

In his description of plaintiff's residual functional capacity, ALJ Morris included some of the limitations outlined by Dr. Jansen. ALJ Morris concluded that plaintiff "must avoid public contact," but could have "frequent contact with five or fewer coworkers." AR 21. He further indicated that plaintiff can "understand and remember short simple instructions," as opposed to complex ones, and can "perform tasks with an emphasis on objects and things rather than people." *Id.* ALJ Morris, however, assigned "little weight," AR 24, to Dr. Jansen's opinion that depression and pain "contribute to difficulty with attention, concentration, and cognitive flexibility, which would interfere with [plaintiff's] ability to persist through a normal work day or to respond appropriately to changes in the workplace," AR 433. As a result, ALJ Morris assessed plaintiff as having the residual functional capacity to tolerate "occasional changes in the work

environment." AR 21. ALJ Morris also discounted Dr. Jansen's prediction that plaintiff would be unable to cope with typical work stresses and would be unlikely to return to employment without better pain management. AR 24.

Plaintiff asserts that ALJ Morris erred in disregarding in part Dr. Jansen's opinion. The Court disagrees. As indicated by ALJ Morris, the record reveals "very little if any treatment" for mental health issues. *See* AR 23. In September 2011, plaintiff was seen by a naturopathic doctor, Jo Ann M. Dechant, ND, for menopausal symptoms, which included mood swings, "crying over nothing," being easily irritated, and experiencing anxiety shortly before menses. AR 393-95. At that time, Dr. Dechant observed "[n]o unusual anxiety or evidence of depression." AR 394. Although depression was mentioned in the reports concerning plaintiff's visits to Valley Medical Center ("VMC") in September 2008 and October 2009, plaintiff's chief complaint on each of those occasions was back pain, and neither of the treatment providers involved actually evaluated plaintiff's mental health; they merely noted plaintiff's "history" of depression. AR 357-60.

In September 2008, VMC emergency room ("ER") physician James R. Fackelman, M.D. wrote that plaintiff's "mother and sister are getting a prescription for Zoloft, and giving the medicine to her." AR 359. Plaintiff apparently told Dr. Fackelman that her "own last personal prescription of Zoloft was '6 to 7 months ago.'" *Id.* In October 2009, VMC ER physician Danielle C. Schindler, M.D. indicated that plaintiff "requested a refill on her Celexa as she is currently having trouble finding a

primary care physician." AR 358.[15] Given Dr. Dechant's assessment in 2011 that plaintiff showed no signs of suffering from depression, and Dr. Fackelman's and Dr. Schindler's notations, which both indicated essentially that plaintiff had not, as of September 2008 and October 2009, been receiving any medical care for depression, Dr. Jansen's opinion concerning the potentially debilitating effects of depression was not "uncontradicted." Thus, rather than being required to provide "clear and convincing" reasons for rejecting Dr. Jansen's views, ALJ Morris needed to articulate only "specific and legitimate reasons" for doing so, which are supported by "substantial evidence in the record." *See Lester*, 81 F.3d at 830-31.

The Court is satisfied, however, that ALJ Morris met both standards. ALJ Morris aptly observed that Dr. Jansen's opinion was internally inconsistent. Dr. Jansen's findings that plaintiff tested within the average range for her age on Trail Making tasks and exhibited little difficulty with attention and concentration cannot be reconciled with her conclusion that plaintiff's inability to pay attention and concentrate, as a result of depression and pain, would inhibit her from persisting through a normal work day or responding appropriately to changes in the workplace. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (holding that a discrepancy between the clinical findings and the opinion of a treating or examining physician constitutes a "clear and convincing" reason for not relying on the opinion). In addition, as ALJ Morris noted, Dr. Jansen's views about the severity of plaintiff's mental health issues were out of proportion to, and

[15] Dr. Fackelman prescribed a one-month supply of the antidepressant Zoloft, AR 359, but Dr. Schindler appears to have declined plaintiff's refill request as to the antidepressant Celexa, *see* AR 357-58.

actually contraindicated by, the scant evidence concerning any diagnosis of, or treatment for, anxiety or depression. *See* *Chilcote v. Astrue*, 2013 WL 2033540 at *5 (D. Ore. Apr. 8, 2013) ("Specific, legitimate reasons for disregarding a treating or examining physician's opinion include the absence of regular medical treatment during the alleged period of disability . . . ." (citing *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1464 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989))).

Finally, ALJ Morris appropriately recognized that Dr. Jansen's assessment was based, perhaps in large part, on plaintiff's complaints of pain and an insufficient pain management plan,[16] about which Dr. Jansen, as a psychologist, was not qualified to opine, as she herself acknowledged, *see* AR at 434 ("This examiner defers to the medical provider as to Ms. Yost's physical limitations due to pain . . . ."). *See also* *Jason v. Colvin*, 2015 WL 509804 at *12 (W.D. Wash. Feb. 6, 2015) ("Where a provider renders an opinion that is outside the scope of her treatment expertise and/or specialty, the ALJ does not err in according that opinion little or no weight."). ALJ Morris gave Dr. Jansen's opinion its proper weight.[17]

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[16] Plaintiff told Dr. Jansen that "pain interferes with doing most things," but that she had not recently seen her primary care physician about her pain, having taken a "why bother" attitude. AR 433.

[17] ALJ Morris also suggested that Dr. Jansen's reliance on plaintiff's self-reporting constituted a basis for ascribing "little weight" to her opinion because ALJ Morris found plaintiff "not entirely credible." *See* AR 25. Although an ALJ may reject a medical opinion "if it is based 'to a large extent' on a claimant's self-reports that have been properly discounted as incredible," *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008), the Court declines to address whether such reason was sound in this case in light of the other three grounds for discounting Dr. Jansen's opinion that were articulated by ALJ Morris, as well as plaintiff's challenge to ALJ Morris's assessment of her credibility.

F. Plaintiff's Credibility

ALJ Morris concluded that plaintiff's "medically determinable impairments could reasonably be expected to cause some of the alleged symptoms," but that "her statements concerning the intensity, persistence, and limiting effects of these symptoms are not entirely credible" for four reasons: (i) such statements are inconsistent with plaintiff's "independent daily activities and social interaction," (ii) such statements are not substantiated by medical evidence, (iii) plaintiff appeared to have been engaged in drug-seeking behavior, and (iv) plaintiff misreported her use of substances. AR 22-24. Plaintiff does not directly challenge these grounds for discounting her credibility, but instead argues that ALJ Morris failed to sufficiently catalog which statements regarding which symptoms he found not credible, citing *Brown-Hunter v. Colvin*, 806 F.3d 487 (9th Cir. 2015).[18] Plaintiff's reliance on *Brown-Hunter* is misplaced.

In *Brown-Hunter*, the Ninth Circuit reiterated that, "[t]o ensure that our review of the ALJ's credibility determination is meaningful, and that the claimant's testimony is not rejected arbitrarily, we require the ALJ to specify which testimony she finds not credible, and then [in the absence of a conclusion that the claimant is malingering] provide clear and convincing reasons, supported by the evidence in the record, to support that credibility determination." *Id.* at 489; *see id.* at 492-93. In *Brown-Hunter*, the ALJ did not specifically identify any inconsistencies between the claimant's testimony and the record; rather, "she simply stated her non-credibility conclusion and then summarized the

[18] Plaintiff cited a version of the opinion in *Brown-Hunter* (798 F.3d 749) that was withdrawn and superseded on denial of rehearing at least two months before she filed her opening brief.

medical evidence supporting her [residual functional capacity] determination." *Id.* at 494. ALJ Morris has done so much more.

ALJ Morris described in detail plaintiff's various activities of daily living,[19] which he concluded were inconsistent with her assertion that she has disabling functional limitations. *See* AR 20-21. He also highlighted medical evidence from throughout the period of alleged disability indicating that plaintiff exhibited no loss of muscle strength or decrease in her range of motion, was able to ambulate without assistance, experienced complete resolution of the de Quervain's tenosynovitis in her left wrist, was discharged from physical therapy prescribed for back and neck pain at her own request, suggesting that her symptoms are less severe than she alleges, and displayed no signs of unusual anxiety or evidence of depression. *See* AR 22-23.[20] In addition, ALJ Morris referred to

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[19] The Court agrees with plaintiff that ALJ Morris's finding about her "taking care of her elderly grandmother and selling Avon," AR 20, misstates what plaintiff told Dr. Jansen during the psychological diagnostic interview. Plaintiff explained to Dr. Jansen that her mother, who generally tended to her grandmother and sold Avon products, had been admitted to the hospital, and that, as a result, plaintiff had been delivering Avon products for her mother. AR 431. ALJ Morris's misunderstanding is harmless; although plaintiff was not "selling" Avon products, she was delivering them for her mother, which is consistent with plaintiff's testimony that she is able to drive, that she sees her mother, who lives about 10-15 minutes away, every other day, that she drives, about once a month, when she gets her food stamps, to the Fred Meyer near her ex-husband's house in Renton, where she was staying, and that she visits her sister, who lives in the Northgate area, on occasion, for an entire day at a time, but does not go often because she "can't afford the gas" and doesn't "want to be driving on the freeway." AR 54, 56-58, 60-61.

[20] As summarized by ALJ Morris, the record reflects that, in September 2008, plaintiff had "normal motor strength and reflexes"and "no back pain with sitting." AR 22; *see* AR 359. In October 2010, although plaintiff complained of back pain, "she denied loss of muscle strength or motor control." AR 22; *see* AR 355; *see also* AR 356 ("The patient moves all of her extremities, ambulates without assistance, [and is] able to ambulate on her heels and toes. Muscle strength is 5/5 and equal in both upper and lower extremities."). In December 2010, plaintiff "moved all extremities with no arm weakness or neurologic findings." AR 22; *see* AR 353. In April 2011, plaintiff had "4+/5 strength in her right upper extremity and 5/5 strength in her left upper extremity with full range of motion in her shoulders, elbows, and hands." AR 22; *see* AR 405-06. In July 2011, plaintiff reported back pain and tingling in her left hand

plaintiff's own admissions to treatment providers concerning drug-seeking behavior,[21] AR 23-24, and relied on laboratory results contradicting plaintiff's denial of cocaine use, AR 24.[22] ALJ Morris provided specific, clear and convincing reasons, supported by medical evidence, for doubting plaintiff's credibility.

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and foot, but the result of a "neurovascular examination was normal with no numbness or weakness." AR 22; *see* AR 401-03. In September 2011, plaintiff's back pain was described as "mild, non-radiating, and stable." AR 22; *see* AR 390-92. Plaintiff's brief period of physical therapy was preceded by an emergency room visit in October 2011 for shoulder pain, during which the treatment provider "elected not to prescribe narcotics." AR 22-23; *see* AR 349-50. After two physical therapy sessions in October 2011, plaintiff reported no pain or tingling in her fingers and only slight restriction of joint mobility; she later cancelled all future appointments. AR 23; *see* AR 362-64. The de Quervain's tenosynovitis in plaintiff's left wrist was diagnosed in February 2012, treated with an injection, and resolved by April 2013, when the same symptoms appeared in plaintiff's right wrist. *See* AR 23; *see also* AR 386-89, 445-48. In April 2013, plaintiff was treated for a wound in her left armpit, as well as the right wrist de Quervain's tenosynovitis; at that time, her right wrist "had full range of motion without inflammation, erythema, warmth, or weakness." AR 23; *see* AR 445-51. Although the report from the first of plaintiff's two visits with Dr. Lin in April 2013 mentions a depressive disorder not otherwise specified, the report contains no discussion other than an indication that the disorder is considered chronic and that a refill was provided for the antidepressant citalopram (Celexa). AR 449. In June 2013, plaintiff told a treatment provider that, for a few months, she had been taking 1.5 times the regular dosage of Celexa. AR 467. In July 2013, plaintiff reported that she had decreased her intake of Celexa to the prescribed amount of 40 mg per day and had not experienced any increased depression. AR 464; *see* AR 23. The treatment notes from both June and July 2013 indicate that plaintiff exhibited "no unusual anxiety or evidence of depression." *See* AR 23; *see also* AR 465, 469.

[21] In addition to plaintiff's admission to Dr. Fackelman that she was taking Zoloft prescribed to her mother and sister, AR 359, ALJ Morris cited plaintiff's statement to Dr. Lin in September 2010 that she had self-medicated with her mother's Vicodin and her sister's Xanax. *See* AR 23-24; *see also* AR 412. In addition, ALJ Morris referenced plaintiff's failed attempt in January 2011 to obtain a new prescription for Percocet and an injection of Toradol (ketorolac tromethamine), a nonsteroidal anti-inflammatory drug ("NSAID"). AR 24; *see* AR 407-08. In January 2011, plaintiff told a nurse that she had been taking double the dose of Percocet because the prescribed amount of one tablet every six hours "did not help." AR 407. Pursuant to Dr. Lin's direction, plaintiff was asked to provide a urine sample for toxicology screening, but plaintiff instead left the clinic, stating that she would "go to emergency room." AR 408.

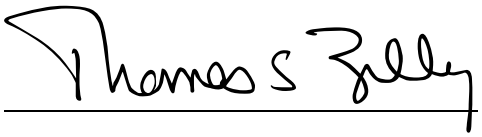
[22] In November 2009, plaintiff had her first appointment with Dr. Lin, who made the observation that plaintiff, who was seeking a "refill of narcotics," exhibited "exaggerated pain behavior." *See* AR 22; *see also* AR 416-17. A urine toxicology screening was performed that day, and plaintiff tested positive for cocaine and opiates. AR 418. A little less than three years later, during the psychological diagnostic interview with Dr. Jansen in October 2012, plaintiff indicated that she had used cocaine only during her first marriage, AR 432, which ALJ Morris calculated as being more than a decade ago, *see* AR 24; *see also* AR 431 (indicating that plaintiff's first marriage lasted four years and her second marriage lasted seventeen years).

Conclusion

For the foregoing reasons, the Commissioner's denial of DIB and SSI benefits is AFFIRMED. The Clerk is DIRECTED to enter judgment accordingly and to send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

DATED this 24th day of May, 2016.



Thomas S. Zilly
United States District Judge